

(d) *Requirement of tolerance.* If the experimental use pesticide is to be used in or on food or feed, the applicant must—

(1) Submit evidence that:

(i) A tolerance or exemption from the requirement of a tolerance has been established for residues of the pesticide in or on such food or feed under section 408 of the Federal Food, Drug and Cosmetic Act; and

(ii) The proposed program would not reasonably be expected to result in residues of the pesticide in or on such food or feed in excess of that authorized under section 408 of the Federal Food, Drug and Cosmetic Act; and

(iii) All inert ingredients in the pesticide are exempted from the requirement of a tolerance under the appropriate section of 40 CFR part 180, subpart D; or

(2) Certify that the food or feed derived from the experimental program will be destroyed or fed only to experimental animals for testing purposes, or otherwise disposed of in a manner which will not endanger man or the environment. The method of destruction or disposal shall be described in the application for the permit.

[44 FR 41787, July 18, 1979, as amended at 50 FR 49020, Nov. 27, 1985; 73 FR 75599, Dec. 12, 2008]

§ 172.25 Administration of State programs.

(a) *General.* State experimental use permit programs shall be consistent with the Federal experimental use permit program, as set forth in subpart A of 40 CFR part 172.

(b) *Procedures leading to issuance.* An application for an experimental use permit shall be made in writing, and shall contain sufficient information, including a confidential statement of formula for any new product, to enable the State to determine whether use pursuant to the permit would be in accordance with the purposes of FIFRA and this subpart.

(c) *Labeling.* (1) New products shall bear labeling satisfying the requirements of § 172.6(a), except that the prominent statement “For Distribution and Experimental Use Only Within (State)” shall be used in place of “For Experimental Use Only”. The des-

ignated State agency may approve, as directions for use on labeling, the experimental program, provided such program is to be distributed with the product.

(2) The designated State agency may permit an EPA or State registered pesticide to be used under an experimental use permit with supplemental labeling as approved by the State agency. In exercising this discretion, the designated State agency shall ensure that the supplemental labeling and the registered label together satisfy the requirements of § 172.6(a).

(d) *Duration.* State experimental use permits shall be issued for a specified period of time, not to exceed three years, depending upon the nature of the pest problem and the requirements of the testing program submitted. The designated State agency may renew, extend or amend the stated duration of a permit, if circumstances warrant.

(e) *Limitations.* The designated State agency shall impose such limitations in the permit as are necessary to protect health and the environment, including limitations on quantity, sites, area, disposal, and other aspects of pesticide use.

(f) *Program surveillance and reporting of data.* (1) The permittee shall supervise the test program and evaluate the results of testing at each site of application. The designated State agency shall require the permittee to report to it immediately any adverse effects resulting from use of, or exposure to, the pesticide.

(2) During the course of the program, the designated State agency shall require the permittee to submit such reports (both special and periodic) as are necessary to supervise effectively the progress of the program to prevent unreasonable adverse effects on man or the environment. The designated State agency shall also require the permittee to submit a final report at the conclusion of the program. Where applicable, such reports shall also be made available to the U.S. Department of Agriculture, Food Service and Quality Service (FSQS), as required by § 172.8(c).

(g) *Disposal.* All pesticides and pesticide containers, whether disposed of during the course of a State permit or

Environmental Protection Agency

§ 172.26

remaining at the termination of a permit, must either be:

(1) Disposed of in accordance with a disposal plan approved as part of the experimental program; or

(2) Returned to the permittee for storage or disposal in accordance with the requirements of RCRA and rules there under; or

(3) If the product is currently registered, used in accordance with the registered label.

[44 FR 41787, July 18, 1979, as amended at 60 FR 32097, June 19, 1995]

§ 172.26 EPA review of permits.

(a) *Notification of State action.* (1) Within 10 days after the issuance of an experimental use permit, the designated State agency shall notify EPA of the action by forwarding to the appropriate EPA Regional Office a copy of the permit, a description of the experimental program to be conducted under the terms of the permit, a copy of the approved labeling, and a copy of the confidential statement of formula for any new product.

(2) Within 10 days after amendment or revocation of an experimental use permit by a State, the designated State agency shall notify the appropriate EPA Regional Office in writing of the amendment or revocation. The notice shall include a brief explanation of the reason for the amendment or revocation. If amendments to permits include changes in the approved labeling, the designated State agency shall also forward a copy of the amended labeling.

(3) EPA shall give notice in the FEDERAL REGISTER of State issuance of experimental use permits.

(b) *Reports.* The designated State agency shall submit the following reports to EPA:

(1) An annual report covering the number of permits issued, the names and addresses of permittees, the names of the products covered by permits, and the State permit numbers issued;

(2) Reports, as requested by EPA, containing any information that EPA may determine necessary to ensure that a State has acted in compliance with provisions of FIFRA and this subpart; and

(3) Reports of any serious adverse effect(s), as soon thereafter as possible,

from use of, or exposure to, a pesticide used pursuant to an experimental use permit.

(c) *Revocation by EPA.* (1) The Administrator may revoke an experimental use permit issued under this subpart if he finds:

(i) That its terms and conditions are being violated;

(ii) That its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment;

(iii) That new evidence demonstrates that any tolerance upon which the permit is based will be inadequate to protect the public health, or that any exemption from the requirement for a tolerance is no longer appropriate; or

(iv) That a failure by the permittee to meet any other provisions of FIFRA or this subpart has occurred.

(2) The Administrator shall, prior to revoking a State experimental use permit, consult with the State agency which issued the permit, except in cases where continued use of the pesticide under the permit would create an imminent hazard to man or the environment.

(3) The Administrator shall notify the designated State agency, in writing, of the revocation, and the State agency shall notify the permittee, also in writing, of the revocation.

(4) The permittee shall notify all participants of the revocation within 10 days after he receives notice of revocation.

(5) The revocation of a permit shall not preclude the Administrator from initiating civil or criminal sanctions for violations of the permit conditions or other violations, as authorized by law.

(6) If a permittee wishes to contest the revocation of a State experimental use permit, he shall, within 30 days after receipt of notice of such revocation, file with the Administrator a written request for an opportunity to confer with the Administrator or his designee. The revocation of the permit shall remain effective pending the outcome of any conference requested under this paragraph.

(7) If a permittee requests a conference under paragraph (c)(6) of this section, the Administrator shall provide the permittee: